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Report Highlights:
The Hong Kong government (HKG), after evaluating the impact of its voluntary labeling scheme for biotech food products over the past year, released its conclusions to the Legislative Council on July 8, 2008, suggesting there is no need for a mandatory labeling law in Hong Kong. The HKG noted difficulty in carryout a law that currently does not have an international standard to back it up. As a result of its evaluation, the HKG plans to continue to promote voluntary labeling of GMO products as a viable alternative for the trade. Hong Kong (HK) is currently the 7th largest market for U.S. high value food products in the world, with U.S. exports to HK in the first five months of 2008 surpassing 2007 levels by 88% to $461 million, and are expected to break $1 billion by the end of the year. If a mandatory biotech labeling law were to take affect, most of these products would be impacted. The voluntary guidelines have not affected U.S. exports to Hong Kong. The drafting of the bill for the implementation of Cartagena Protocol was halted about two years ago pending the Protocol's developments of detailed implementation requirements.

Includes PSD Changes: No
Includes Trade Matrix: No
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SECTION I. Executive Summary

The Food and Environmental Hygiene Department (FEHD) of the Hong Kong government (HKG), after evaluating the implementation of its voluntary labeling scheme on agricultural biotech products, has concluded in a paper to the Legislative Council on July 8, 2008 that there is no need for a mandatory labeling law in Hong Kong.

The HKG released guidelines for a voluntary labeling scheme for biotech foods in July 2006. After a year of implementation in 2007, the FEHD conducted an evaluation to assess the effectiveness of the voluntary labeling scheme, in order to determine the need for a mandatory biotech labeling law. Based on the evaluation exercise HKG concluded that any biotech labeling in the market thus far, has been truthful and substantiated. Its priority is to continue to further promote voluntary labeling so as to bring out the potential benefits of the scheme. The HKG indicated that it would be difficult to launch a mandatory labeling law since there is the lack of an international standard.

In 2007, the United States exported a total of $1.3 billion of agricultural and food products to Hong Kong, of which $780 million were high value food products. Hong Kong is currently the 7th largest market for U.S. high value products, with sales in the first five months of 2008 surpassing 2007 levels by 88% to $461 million. Most of these products would be subject to any mandatory biotech labeling law, as Hong Kong's labeling policy applies to pre-packaged food only. The voluntary guidelines have not affected U.S. exports to Hong Kong.

Currently, the HKG does not have any specific biotechnology regulations with regard to the production or labeling of biotech food products. HKG makes no distinction between conventional and biotech foods. Thus, all are subject to the same food safety regulation.

HKG announced its intention to introduce a new biotech legislation for agricultural products in 2003, which will provide a legal framework for the implementation of the Cartagena Protocol on Biosafety. The HKG has not set any deadline for the enactment of the new legislation. It also claimed that the future legislation will adhere strictly to the Protocol and would not set any requirements beyond those of the Protocol. It has been almost five years since the HKG's announcement of its intention to incorporate the Cartagena Protocol on Biosafety by enacting a new legislation. The drafting of the legislation was halted about two years ago because the government has decided to wait for the Protocol details on its development on implementation. HKG officials indicated that the future legislation will make close reference from international standard on this subject.

According to the Protocol, Living Modified Organisms (LMOs) intended for direct use as food or feed, or for processing must fulfill all documentation requirements. For LMOs which are intended for introduction into the environment, the exporting party is required to give advance notification to the competent authority of the importing country and seek its approval in addition to fulfilling all documentation requirements.

Hong Kong does not have any significant agricultural production, nor any production of biotech crops. U.S. exports of agricultural products carrying LMOs for intentionally released to the environment are negligible if any. Hence, if Hong Kong implements a new legislation in line with the Cartagena Protocol, it should not have any impact on U.S. exports in the context of advance notification. However, the U.S. exports approximately $9 million worth of corn and soybeans to Hong Kong annually. These products may be subject to documentation requirements covered by such a legislation, if they contain GMOs and are considered "living" depending on the definition of the future legislation.

U.S. Exports of Agricultural and Food Exports to Hong Kong in 2007

Products	US$ million	% of U.S. total exports	Ranking
Agricultural, Fish & Forestry Total	**1,313**	**1.3%**	**15**
1005 Corn (Maize)	7.4	0.08%	39
Soybeans	1.33	0.01%	43
Sub-total	***8.73***		
Consumer-Oriented Ag. Total	**782**	***2%***	**8**

Source: U.S. Department of Commerce, Bureau of Census

SECTION II. Biotechnology Trade and Production

Hong Kong does not commercially produce any biotechnology crops, nor does it conduct field trials. There is no law prohibiting biotech crop plantation.

Farming is insignificant in Hong Kong. The land use for vegetables, flowers, field crops, and orchards are 320 hectares, 180 hectares, 20 hectares and 280 hectares respectively. In 2007 agricultural production amounted to $140 million, comprising $39 million in crop production, $63 million in livestock production and $39 million in poultry production. The livestock and poultry industries are diminishing. In essence, farming has limited future prospects.

In recent years, the HKG has been promoting organic farming so as to find a niche market for Hong Kong's grown vegetables amidst the severe competition from imports from China. With the further development of organic farming, an organic certification service company, the Hong Kong Organic Resource Center (HKORC), was established in 2002. HKORC started to provide independent organic certification service in late 2004 for farmers and food processors. By the standard of HKORC, all certified organic products have to be GM free.

Hong Kong does carry out research on biotech rice at in the Chinese University of Hong Kong. Field trials are conducted in China. One of the research projects is by Professor Samuel Sun, who in co-operation with the National China Hybrid Rice Research & Development Center, conducts research to improve the quality and nutritional value of super hybrid rice by utilizing transgenic plant production methods. According to Professor Sun, 50 percent of rice produced in China is of hybrid type, which has a yield that is 30 percent higher than conventional rice. Professor Sun's research project is to improve the lysine content of the super hybrid rice.

On the trade front, Hong Kong import regulations regard biotech products as conventional products. Importers/exporters are not required to make any special declarations if products are of biotech origin. However, the few soybean users in Hong Kong require non-GM soybeans because of market-driven factors, particularly if their products are exported to overseas markets. Buyers generally have a perception that all U.S. soybeans are of biotech origin. Canadian soybeans of the grade SQWH (Special Quality White Hilum) are reportedly popular among soybean users in Hong Kong. However importers claim that while SQWH soybeans are non-GM there is no identity preservation. In 2006, Hong Kong imported only 3 percent ($365,000) of its soybean demand from the United States while 90 percent ($12.6 million) was supplied by Canada.

Hong Kong is not a food aid recipient and is unlikely to be a food aid recipient in the future.

SECTION III. Biotechnology Policy

Presently, Hong Kong does not have any regulatory measures on biotech products. In the area of production or field-testing, there are no special pieces of legislation regulating biotech crops. There is no law prohibiting biotech crop plantation. According to Hong Kong's organic certification scheme, all organic products should not be genetically modified. The certification scheme, however, is voluntary and is not backed legislatively. Neither is there any legislation for the GM labeling for packaged foods or feeds. Hong Kong does not maintain a list of approved biotechnology crops. Biotech crops can be imported to Hong Kong as conventional crops and are subject to the same legislations.

In a paper dated July 8, 2008 to the Legislative Council [Ref: LC paper No. CB(2)2503/07-08(01)], HKG announced that there is no need for a mandatory labeling law in Hong Kong based on an evaluation exercise of the voluntary labeling scheme of biotech food, which has been in place since July 2006. HKG said they are not adopting a mandatory scheme because it is not an international standard.

Voluntary Labeling

In a proposal submitted to the Hong Kong Legislative Council in 2003, HKG announced its intention to launch a program of voluntary labeling for pre-packaged food and mandatory pre-market safety assessment requirements for all food products. While HKG has not set a date for the implementation of the mandatory pre-market safety assessment, it released the guidelines for voluntary labeling of biotech foods in order to answer the public's call for consumers' right to make an informed choice of biotech foods.

The Food and Health Bureau is the policy bureau responsible for the policy direction over biotech foods. Its executive arm, the Food and Environmental Hygiene Department (FEHD), is the regulatory department for food safety through the Center for Food Safety. Both the pre-market safety assessment and labeling of biotech foods are under the portfolio of the Bureau while the Center for Food Safety is executing the policy decisions of the bureau.

The guidelines were formulated by a working group established under the Center for Food Safety, with members coming from various sectors including manufacturing, wholesale, retail, consumer groups and government departments. The guidelines are advisory in nature and do not have any legal effect. Adoption is entirely voluntary and is not binding. The guidelines apply to prepackaged food.

The guidelines are based on the following four principals:

- The labeling of biotech food will comply with the existing food legislation.
- The threshold level applied in the guidelines for labeling purpose is 5 percent, in respect of individual food ingredient.
- Additional declaration on the food label is recommended when significant modifications of the food, e.g. composition, nutrition value, level of anti-nutritional factors, natural toxicant, presence of allergen, intended use, introduction of an animal gene, etc, have taken place.
- Negative labeling is not recommended.

As the guidelines are voluntary, U.S. food exports should not be affected if they choose not to have any biotech labeling. However, it should be noted that the HKG does not encourage negative labeling when no biotech counterparts of the respective products ever exist. Also, the HKG does not encourage negative labeling using very definite terms such as:

- GMO free,
- Free from GM ingredients, etc

For products with such definite negative labeling, the government may take the initiative to test the products against GM ingredients and a zero tolerance will be adopted for testing purposes. If products are found to have misleading labeling, a retailer may be subject to prosecution under Section 61 – False Labeling and Advertisement of Food or Drugs of Chapter 132 Public Health and Municipal Services Ordinance. (Available at http://www.legislation.gov.hk/eng/home.htm)

If the trade chooses to apply negative labeling, the government advises to use less definite terms such as "sourced from non-GM sources" (which contains less than 5 percent of GM content) and to have documentation to substantiate such declaration.

For more details, please refer to Gain Report HK#6026.

After a year of implementing the voluntary system, the Hong Kong government conducted a survey to assess the effectiveness of the voluntary scheme in 2007. The evaluation result showed that all the samples indicating biotech status carried negative labels and the majority of the negative labels are backed up by documentary proof. Also, for the samples subject to laboratory testing, all tested samples bearing negative labels did not contain any detectable biotech material or specific biotech events.

Mandatory Pre-market Safety Assessment

HKG plans to introduce legislative measures mandating pre-market safety assessment, according to a proposal delivered to the Legislative Council in 2003. Importers or manufacturers of food containing biotech ingredients would be required to submit documents and certificates to the Food and Environmental Hygiene Department (FEHD) prior to importing the food to Hong Kong, detailing the safety assessments that have been conducted by the developer of the biotech ingredients. The results of evaluations conducted on the ingredients by overseas regulatory authorities would also be submitted for the pre-market safety assessment. FEHD would assess risks associated with toxins, allergies, nutrition, etc., based upon guidelines developed by Codex. Foods containing biotech ingredients that pass the safety assessment could then be sold in Hong Kong.

FEHD would develop a list of approved biotech ingredients based on the applications made by importers and manufacturers. The list would be publicized and updated regularly for public reference. Importers and manufacturers would bear the responsibility of determining whether their products contain only approved biotech ingredients and, if so, whether the foods may be imported without any further safety assessment. For foods containing biotech ingredients not on the approved list, an application to FEHD for pre-market safety assessment would be required.

Regarding products already in the market, FEHD would require importers or manufacturers to provide risk assessment reports if products contain biotech ingredients. Such biotech products could be sold in Hong Kong within a grace period pending document review and approval.

The proposal empowers FEHD to take food samples from the market to periodically test for biotech ingredients. Unapproved biotech products would be required to be removed from the market, and the importers would be prosecuted.

The government has not set a date for the implementation of the mandatory pre-market safety assessment.

Cartagena Protocol on Biosafety

In 2003, the Hong Kong government announced its intention to enact a new legislation in order to incorporate the Cartagena Protocol on Biosafety requirements.

The Environment Bureau takes the lead on the implementation of the Cartagena Protocol on Biosafety. While it is a policy bureau, the technical responsibility lies with the Agriculture, Fisheries and Conservation Department (AFCD). AFCD is primarily responsible to provide infrastructure support services to promote agricultural production and sustainable development of agriculture and fisheries in Hong Kong. In 2002, AFCD created a division called Biodiversity Conservation Division. Among other duties, its role is to prepare Hong Kong to implement the Cartagena Protocol.

Hong Kong at present is not a party of the Convention on Biological Diversity and the Cartagena Protocol on Biosafety. Hong Kong is a Special Administrative Region of China. The application of international agreements to Hong Kong for agreements to which China is a party will be decided by China in accordance with the circumstances and needs of Hong Kong, after seeking the views of the Hong Kong government. China has been a party to the Convention and the Protocol since 1993 and 2005 respectively. The Hong Kong government has obtained the agreement-in-principle of China to extend the application of both the Convention and the Protocol to Hong Kong when it is adequately prepared. In essence, the Protocol was not extended to Hong Kong simultaneously upon China's ratification of the Protocol in 2005.

With this background, the Hong Kong government first announced its intention to apply for the extension of the Cartagena Protocol in late 2003. The Hong Kong Government had sent delegates to attend the Protocol's COP-MOP (Conference of the Parties serving as the Meeting of the Parties) as part of China's delegation to keep track of the development. Government officials revealed that they plan to take into account the developments of the Protocol when drawing up the detailed regulatory framework for implementing the Protocol in Hong Kong. The drafting of the legislative work has halted. The government officials explained that they need to make reference from Protocol's implementation details, which have yet to be discussed by members. According to the officials, Hong Kong's future requirements will be in line with and would not be more or less stringent than those stipulated by the Protocol. According to the published information, the future legislation will encompass the following key provisions.

a) Establishment of a licensing system for the Agriculture, Fisheries and Conservation Department (AFCD) to process applications for first imports of LMOs (Living Modified Organisms) into Hong Kong for intentional introduction into the environment in accordance with the Advance Informed Agreement (AIA) procedure of the Protocol;

b) A requirement that an exporter in Hong Kong shall send a notification enclosing the risk assessment report to the competent authority of the importing party and obtain its prior consent for the export of the LMO for first intentional introduction into the environment at the importing end;

c) A requirement that approval shall be obtained from AFCD prior to the domestic use or export of a locally developed LMO for intentional introduction into the environment or for direct use as food, feed or for processing;

d) Documentation requirements on trans-boundary movements of LMOs;

e) Penalties for violation of the import, export or documentation requirements set out in (a) to (d) above;

f) Other miscellaneous matters including designation of the Director of AFCD as the competent authority to discharge the Protocol's obligations in Hong Kong; and

g) Implementation of measures to fulfill obligations under the Protocol following future decisions made by Parties to the Protocol, e.g. setting standards for the identification, handling, packaging and transport of LMO.

SECTION IV. Marketing Issues

HKG's green groups, some consumer organizations and a few Legislative Council members have been advocating for a mandatory labeling of biotech foods for many years. Their rationale is based on consumers' "right to know". Food safety or science are not part of their argument. Lobbying by green groups and consumer organizations have gained support of certain Legislative Council (Legco) members. In January 2000, Legco adopted a motion to "draw on the experience of most member states of the European Union and expeditiously legislate for a labeling system" and to "conduct strict examinations and tests" on biotech foods. On June 2003, Legco passed a motion calling on the government to expeditiously establish a "voluntary first, and then mandatory" approach to a labeling system for biotech foods.

However, the food industry has generally opposed to mandatory labeling of biotech foods on the grounds that it would limit the choices of consumers, reduce variety of food supplies to Hong Kong and add burden to consumers and the industry alike.

On the whole, HK consumers are not concerned about food containing biotech ingredients. In recent years, there has not been any strong opposition in the public urging the HKG to adopt mandatory labeling for biotech foods. Prices and nutritional values are of bigger concern in general. However, local food processors would specify the use of non-biotech soybeans particularly if their products are exported overseas.

SECTION V. Capacity Building and Outreach

ATO Hong Kong is going to organize a State Department funded outreach activity in October 2008. A series of seminars will be staged in Hong Kong and Macao to address biotechnology from a science perspective. The target audience will include government officials, university students, secondary school teachers, traders and consumers.